

**Guidance for Implementation of  
S.L. 2014-120, Section 29: REFORM AGENCY  
REVIEW OF ENGINEERING WORK**

*Prepared by the N.C. League of Municipalities and  
the N.C. Association of County Commissioners*

**December 12, 2014**

## **OVERVIEW**

New requirements for certain local government development plan review procedures became effective December 1. The requirements, included in last session's omnibus regulatory reform bill (S. L. 2014-120, Section 29), sought to standardize some aspects of plan review and use of the title "engineer." All programs subject to the new law must report to the legislative Environmental Review Commission (ERC) on their implementation of various aspects of the new law before January 14, 2015. This guidance explains the requirements of this new law and includes a template report.

## **AFFECTED PROGRAMS**

To know if the requirements apply to a specific development plan review process, you must answer YES to BOTH of these questions:

1. Is the review being conducted pursuant to a program *approved by or delegated by* the N.C. Department of Environment and Natural Resources or the N.C. Department of Health and Human Services?
2. As a result of the review, will the local government grant a permit, license, or approval to a member of the public?

Examples of program areas that must follow the new requirements (detailed below) include those that review sedimentation/erosion control, stormwater, and water/sewer designs, as well as cross-connection plans and 401 certifications. Other programs may also be subject to the requirements of this law. Notably, review of transportation designs is NOT subject to these new requirements.

## **NEW REQUIREMENTS**

If a local government's programs fall under the description above, the law requires those programs to make the following adjustments to their plan review processes by December 1, 2014:

1. ***Identify "required" vs. "suggested" changes.*** The new law requires plan reviewers in affected programs to distinguish between plan changes that are *required* by a statutory or other legal authority and those that the reviewer *offers as suggestions* for improvement. The law directs plan reviewers to specifically identify the legal authority for any *required* changes when communicating with the plan submitter.
2. ***Innovative designs involving a Professional Engineer (PE).*** The new law specifies a procedure for local governments to follow when (1) a PE submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures (i.e., "innovative" designs), AND (2) the submitting PE requests additional internal review of that design or practice. For these cases, the local government must establish a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of the design details. As an additional requirement, if the first local government plan reviewer was not a PE, then the submitting PE may request that a PE conduct this secondary, "escalated" plan

review. If the local government does not employ a PE, the new law makes allowances for the submitting party to pay for an outside PE of the local government's choice.

3. ***Disputes involving changes that are “required.”*** The new law also directs local governments to establish an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being “required” under a specific, identified legal authority. Unlike the informal internal review procedure described in (2) above, the law leaves the details for this procedure up to the local government to determine.
4. ***Job titles.*** The new law prohibits local government employees whose responsibilities include review of plans in affected programs from including the word “engineer” in their public job titles *unless* that employee is a PE. If the employee does not hold a PE license, then the local government must propose revisions to those employees’ public job titles in order to remove the word “engineer.” However, in recognition of unintended consequences of this new requirement, the law allows local governments to retain the word “engineer” in job titles for these positions for human resources purposes. For example, an employee without a PE may hold a position called “Civil Engineer I” for job advertisement, recruitment, and classification purposes, yet when that employee communicates with the public, the title that appears on the employee's business cards, emails, and other correspondence must use alternate language such as, “Stormwater Plan Review Technician” or “Engineering Associate.”
5. ***Selection of a private-sector PE if local unit does not employ a PE:*** The requirements outlined in (2) above note that the local government must provide an opportunity for secondary “escalated” review by a PE, if the submitting PE requests a secondary review by an individual with those qualifications. If the local unit does not employ a PE, the new law directs those local governments to develop a process for developing and maintaining a list of outside consulting PEs.

## **REPORTING REQUIREMENTS**

The new law requires local governments to submit a report to the ERC on how they implemented requirements (1)-(4) above. The first report is due January 14, 2015. After that first report, local governments must make three additional annual reports, due January 15, 2016; January 15, 2017; and January 15, 2018. Unlike the first report, these additional annual reports must only state how many times the local government utilized the informal review procedures detailed in (2) and (3) above, and the outcome of the secondary “escalated” reviews that took place.

Local governments may wish to utilize the reporting template below for the initial report due to the ERC by January 14, 2015.

# **S.L. 2014-120: Regulatory Reform Act of 2014**

## **REFORM AGENCY REVIEW OF ENGINEERING WORK**

**SECTION 29.(a)** Definitions. – The following definitions apply to Section 6 of this act:

- (1) Practice of Engineering. – As defined in G.S. 89C-3.
- (2) Professional Engineer. – As defined in G.S. 89C-3.
- (3) Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.
- (6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering.

**SECTION 29.(b)** Standardize Certain Regulatory Review Procedures. – No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

- (1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.
- (2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement.

**SECTION 29.(c)** Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

- (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a

unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.

- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 29(b) of this act justifies a required change.

**SECTION 29.(d) Scope.** – Nothing in Section 29(c) of this act shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

**SECTION 29.(e) Procedure to Develop List of Consulting Professional Engineers.** – Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to subdivision (1) of Section 29(c) of this act.

**SECTION 29.(f) Pilot Study.** – No later than March 1, 2015, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

- (1) Produce an inventory of work activities associated with the operation of each regulatory program.
- (2) Determine the work activities identified under subdivision (1) of this subsection that constitute the Practice of Engineering.
- (3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

**SECTION 29.(g) Report.** – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

**SECTION 29.(h) Review of Working Job Titles.** – No later than December 1, 2014, each Regulatory Authority and the Department of Transportation shall do the following:

- (1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the Working Job Titles identified under subdivision (1) of this subsection or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

**SECTION 29.(i) Initial Report.** – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

- (1) The standardized procedures required by Section 29(b) of this act.
- (2) The informal review process required by Section 29(c) of this act.
- (3) The review of Working Job Titles required by Section 29(h) of this act.

**SECTION 29.(j)** Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 29(c) of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

**SECTION 29.(k)** Annual Reporting Sunset. – Section 29(j) of this act expires on January 1, 2019.

# **Report to the Environmental Review Commission**

## **Pursuant to S.L. 2014-120, Sec. 29 REFORM AGENCY REVIEW OF ENGINEERING WORK**

**January 14, 2015**

**Name of Local Government Unit: Town of Landis**

**Approved/delegated program subject to reporting requirements:**

☐ Sedimentation/erosion control

☒ Stormwater

☐ Water/sewer

☒ Cross-connection

☐ 401 certifications

☒ Other **Watershed Development**

**Signature of report preparer: Chris Richie**

**Date: 01-14-2015**

*Submit this report electronically to Mariah Matheson, Commission Assistant,  
Environmental Review Commission, at [Mariah.Matheson@ncleg.net](mailto:Mariah.Matheson@ncleg.net).*

**Name of local government unit:** Town of Landis

*\*\*Please attach any written procedures that may have been developed to implement the provisions of this law.\*\**

X Check to indicate that this plan review program implemented procedures whereby plan reviewers distinguish between plan changes that are required by statutory or other legal authority and those that the reviewer offers as suggestions for improvement. Refer to S.L. 2014-120, Section 29.(b)(1) for further details about this requirement.

X Check to indicate that this plan review program identifies the statutory or regulatory authority for any revisions or requests for additional information that are required by the program in order to grant the requested plan permit, approval, or license. Refer to S.L. 2014-120, Section 29.(b)(2) for further details about this requirement.

X Check to indicate that this plan review program implemented procedures for local governments to follow when (1) a Professional Engineer submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures, and (2) the submitting Professional Engineer requests additional internal review of that design or practice. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

X Check to indicate that this plan review program established a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of these design details. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

X Check to indicate that this plan review program either employs a Professional Engineer who can conduct further review of these innovative designs, or maintains a list of consulting Professional Engineers of the local government unit's choice that may conduct this review, if requested by and paid for by the submitting Professional Engineer. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

X Check to indicate that this plan review program established an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Refer to S.L. 2014-120, Section 29.(c)(2) for further details about this requirement.

X Check to indicate that this plan review program discontinued use of the word "engineer" in the job titles of all program employees whose responsibilities include review of plans in affected programs, *unless* those employees hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h) for further details about this requirement.



**Name of local government unit:** Town of Landis

☒ Check to indicate that this plan review program reviewed the titles of all employees conducting plan reviews for this program. Refer to S.L. 2014-120, Section 29.(h)(1) for further details about this requirement.

☐ Check to indicate that this plan review program proposed revisions to those employees' job titles in order to eliminate use of the word "engineer" when publicly identifying those employees, if those employees do not hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h)(2) for further details about this requirement.

**Additional information:**

The Town of Landis contracts with the engineering consulting firm of Alley, Williams, Carmen & King, Inc. to provide engineering review of plans submitted for site development, watershed development, stormwater management plans. Professional engineers with that firm provide all reviews on behalf of the Town. The Town has approved standards, details, and policies that govern Town requirements for Town maintained water, sewer, and storm drainage facilities. Our consultant uses these requirements and state minimum design criteria as the basis for their review. This arrangement has worked well for the Town over the years and we have had consistent plan reviews with minimal complaints from the engineering community.

As a result of the requirements contained in S.L. 2014-120, Section 29, we have directed our consultant to provide the required comment language as a part of their future reviews. The Town has always had an open door policy with respect to project issues and any design engineer has been welcomed to discuss with Town management any plan review issues in the past and going forward.

The Town does not currently have any employee with the job description of engineer except the designation of the Town Engineer, who is the Professional Engineer with our consulting firm that serves the Town.

Attached is a memo that ensures the provisions of S.L.2014, Section 29 are complied with until the Unified Development Ordinance can be revised to reflect the text in the new law.

In summary, we are of the opinion that with the directive provided to our consulting firm, the Town of Landis will be in compliance with the provisions of S.L.2014, Section 29.

- Technical reviews of Stormwater Management Plans and Watershed Development plans will be performed by a consulting Professional Engineer hired by the Town to review site plans for compliance. The review will list the name of the Profession Engineer responsible for the review.
- Review comments will include text to delineate if the comments are required to obtain the permit or if the comment is a suggestion or recommendation for consideration by the Submitting Party but that are not required in order to proceed with the permit, license, or approval.
- Comments required to be addressed for the issuance of a permit will have a reference to the statutory or regulatory authority for the requirement.
- Design of alternate devices, design, or practices sealed by a Professional Engineer but not included in the Town's existing guidance, manuals, or standard operating procedures, shall be reviewed by a Professional Engineer hired by the Town to review the alternate design or practices or by the State Agency that has delegated the review of the project to the community. The reviewer shall provide comments to the Stormwater Administrator and Planning Director concerning the adequacy of the proposed system or practice. If the alternate devices, design, or practices are accepted for use on the project, the Consulting Engineer or State Agency shall provide recommendations for the acceptance and operating conditions of the alternate devices, design, or practices. The Developer and/or Landowner shall be responsible for reimbursing the Town for the cost associated with the review performed by the consulting Professional Engineer or State Agency.
- If the engineer for the Developer and/or Landowner does not agree with the Planning Director's or Stormwater Administrator's comments concerning the required plan revisions or the alternate design, then the Developer's and/or Landowner's engineer may request an informal review of the project design documents by the State Agency that has delegated the review of the project to the community. If DENR or DHSS do not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the State Agency. The engineer for the Developer and/or Landowner is responsible for payment of any charges incurred for the costs of the informal review by a Professional Engineer.
- A disagreement between the plan reviewer and the engineer for the Developer and/or Landowner regarding whether the statutory or regulatory authority identified for revisions or requests for additional information designated as "required" under the procedures set forth in NC Session Law 2014-120 Section 29(b) justifies a required change.
- Nothing in this memo is intended to limit the authority of the Stormwater Administrator or Planning Director to make a final decision with regard to a plan submittal following the reviews listed above.
- Employee's reviewing Stormwater Management Plans or Watershed Development plans shall not identify themselves as an engineer unless they have obtained registration as a Professional Engineer in the State of NC.